

### **REMARKS**

Claims 112-141 were pending on the September 3, 2010, notification date of the final Office Action. Claims 112, 113, 119, 121-123, 129, 131-133, 139 and 141 have been amended. Claims 142-156 have been added. Reconsideration and further examination are requested.

#### **Support**

Since support for the features of the amended claims is found throughout the disclosure, including at least ¶¶ [0069] and [0070] of the published application, the Applicant submits that no new matter has been added.

#### **Examiner Interview Summary**

The Applicant thanks Examiners Baron and Christensen for participating in the in person and telephone interview held on December 14, 2010, in which David Jordan, Marie Smyth and Tara Hutchings of Accenture participated on behalf of the Applicant. In the interview, the Applicant discussed how the Poli and Lunteren references do not teach or describe the features recited by the currently amended independent claims 112 and 119. The Examiners agreed that the currently amended independent claims 112 and 119 overcome the rejection and the art of record. In addition, the Examiners noted that further consideration and search will be required in order for the amendments to be entered.

Although no agreement was reached regarding patentability of the application, the Applicant appreciates the further input provided by the Examiners, and has taken their comments into account by further refining the proposed claims, as reflected in the amended independent claims 112, 119, 122, 129, 132 and 139, above. The Applicant submits that the currently submitted claims clearly define subject matter that is patentable over the references of record, and invite the Examiner to discuss the claims further with the Applicant's representatives if the Examiner feels that would be helpful in advancing prosecution on the merits.

#### **§§ 102 and 103 Rejections**

Claims 112, 114, 119-121, 122, 124, 129-132, 134, and 139-141 stand rejected under 35 U.S.C. 103(a) over WIPO Publication No. WO00/64178 (Poli) in view of U.S. Patent No.

6,611,832 (Lunteren); claims 113, 123, and 133 stand rejected under 35 U.S.C. 103(a) over Poli in view of Lunteren and allegedly admitted applicant prior art; claims 115, 118, 125, 128, 135, and 138 stand rejected under 35 U.S.C. 103(a) over Poli in view of Lunteren and U.S. Patent Application No. 2004/0255263 (Ando); and claims 116-117, 126-127, and 136-137 stand rejected under 35 U.S.C. 103(a) over Poli in view of Lunteren and U.S. Patent No. 6,976,062 (Denby). Withdrawal of the §103 rejections is requested.

In an effort to advance prosecution, the Applicant has amended independent claim 112 to express in more clear and expansive form the features that distinguish the claims over the applied reference. For instance, the independent claim 112 now recites the features of:

*receiving, by a set top box, update code streamed to the set top box by a server on a predetermined channel;*  
*generating, by the set top box, a trigger to check whether the set top box is to invoke the update code;*  
*receiving, by the set top box in response to the trigger, an m-bit update flag, wherein the m-bit flag does not uniquely identify the set top box;*

In addition, the Applicant has amended independent claim 119 to express in more clear and expansive form the features that distinguish the claims over the applied reference. For instance, the independent claim 119 now recites the features of:

*determining, by a server, a quantity of set top boxes to update from a plurality of set top boxes;*  
*determining a quantity, n, of bits in an n-bit unique hardware identifier assigned to each set top box;*  
*selecting, by the server, a value, m, based on the quantity of set top boxes to update and the quantity, n, wherein the value, m, is less than the quantity, n.*

In contrast, Poli describes targeting an upgrade to a unique single terminal or to a unique group of terminals using a single terminal address. For example, Poli describes “[a] targeted upgrade applies to a single terminal or a small group of terminals on a given control channel. Each terminal has a specific single-cast address and can, therefore, be addressed by the headend and instructed to completely or partially upgrade its programming.” (*see Poli, page 17, lines 28-31*) In addition, Poli describes the targeted upgrade is determined by a system operator. The upgrade order is transmitted from a headend to a targeted terminal. For example, Poli describes “[a]s shown in Fig. 4, the system operator transmits an upgrade order from the cable headend to

the population of set-top terminals receiving the signal from that headend over the cable network (401).” (see *Poli*, page 16, lines 26-27 and Figure 4) “Each terminal has a specific single-cast address and can, therefore, be addressed by the headend and instructed to completely or partially upgrade its programming.” (see *Poli*, page 17, lines 28-31)

The Applicant has amended dependent claim 121 to express in more clear and expansive form the features that distinguish the claims over the applied reference. For instance, the dependent claim 121 now recites the features of:

*determining, by the server, a second quantity of set top boxes to update from the plurality of set top boxes based on the quantity of users that have provided feedback for the update code;*  
*selecting, by the server, a value, o, based on the second quantity of set top boxes to update and the quantity, n, where the value, o, is less than the quantity, n;*

In contrast, *Poli* describes performing “authentication checks” on downloaded code and if the authentication check fails signaling for a service call. For example, *Poli* describes “an authentication check is performed (222). As before, if the authentication check fails.. a service call signaled (213).” (see *Poli*, page 14, lines 30-31, page 15 line 2, Figure 2 )

*Poli*, whether taken alone or in combination with *Lunteren*, *Ando*, *Denby* and the allegedly admitted applicant prior art do not teach or disclose all the elements of the Applicant’s amended independent claims. Accordingly, a *prima facie* case of obviousness has not been shown and therefore independent claims 112, 119, 122, 129, 132, and 139 should be deemed patentable. Thus, the cited references, whether taken alone or in combination, simply do not fairly teach or suggest all the elements of Applicant’s amended independent claims.

### Conclusion

The other claims in the application are each dependent on the independent claims, and are allowable for at least the above reasons. Because each claim is deemed to define additional aspects of the disclosure, however, the individual consideration of each claim on its own merits is respectfully requested.

By responding in the foregoing remarks only to particular positions taken by the Examiner, the Applicant does not acquiesce with other positions that have not been explicitly addressed. In addition, the Applicant’s selecting some particular arguments for the patentability

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of a claim should not be understood as implying that no other reasons for the patentability of that claim exist. Finally, the Applicant's decision to amend or cancel any claim should not be understood as implying that the Applicant agrees with any positions taken by the Examiner with respect to that claim or other claims.

The Applicant hereby petitions for a one-month extension of time. Fees in the amount of \$130 for the extension are being paid by way of the Electronic Filing System (EFS). Please apply any charges not otherwise paid, or apply any credits to, deposit account 06-1050.

Respectfully submitted,

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